

USSN: 09/932,523

Atty. Docket No.: 2001B078

Response dated January 12, 2005

Reply to Advisory Action mailed December 23, 2004

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### REMARKS/ARGUMENTS

The undersigned appreciates the courtesies extended to attorney Dean Simmons (Reg. No. 30,976) in the telephonic interview of January 12, 2005. In that interview, the issues outlined in this Request for Reconsideration were discussed.

The asserted *prima facie* case of obviousness set forth in the Final Rejection relies upon substituting the "polyester carbonate" of the Kanamori reference into the structure taught by the McCarthy reference. In Applicant's previous Response to the Final Rejection, it was pointed out that is the "aliphatic polyester" and not the "polyester carbonate" of Kanamori that would contain "urethane functionality" created pursuant to the theory asserted in the Final Rejection. In the Advisory Action, it was explained that the *prima facie* case of obviousness is based upon blending the polyester carbonate component of Kanamori with the "aliphatic polyester" component of Kanamori as taught at column 8, lines 1-5. Thus, it was argued that the aliphatic polyester component of Kanamori brings urethane functionality to the blend of the polyester carbonate and aliphatic polyester. Accordingly, it was asserted that Kanamori teaches that a polyurethane may be combined with a polylactic acid as a toughening agent.

However, even if the polyester carbonate component is blended with the aliphatic polyester component, Kanamori provides no teaching or suggestion of the level of inclusion of the aliphatic polyester component.

The pending claims recite that the film structure comprises from about 5 wt.% to about 40 wt.% of a toughening agent selected from several materials, one of which may be a polyurethane. Kanamori provides no suggestion that even if the aliphatic polyester is blended with the polyester carbonate that it should be blended in an amount providing about 5 wt.% to about 40 wt.% of the aliphatic polyester in the blend. The Final Rejection and the Advisory Action provide no explanation of how the references teach such a level of the aliphatic polyester inclusion. For this reason alone, a *prima facie* case of obviousness is not established.

In the January 12, 2005 telephonic interview, it was suggested that the concentration of the aliphatic polyester in the blend may be varied within normal experimentation. However, no

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suggested or exemplary concentration or concentration range is suggested by Kanamori. Indeed, no concentration level whatsoever is suggested. There is simply no starting point concentration to vary through experimentation.

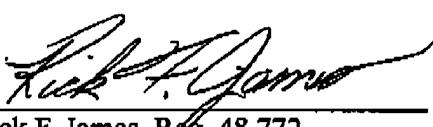
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**Conclusion**

In the light of the foregoing, reconsideration of the Final Rejection and Advisory Action is respectfully requested. Claims 23-36, 38 and 39 are in condition for allowance and an early Notice of Allowance is respectfully requested.

Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number indicated below so that all matters may be expeditiously resolved.

Respectfully submitted,

  
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Rick F. James, Reg. 48,772

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